



September 20, 1999

Mr. Paul Sarahan
Litigation Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-2627

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128765.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for documents associated with enforcement actions or investigations performed or contemplated against a certain individual. TNRCC has made available to the requestor all of the responsive information that TNRCC believes to be public. You claim that the remaining portions of the requested information are excepted from disclosure under sections 552.103(a) and 552.107 of the Government Code. You have submitted the responsive information to this office that you claim is exempt from disclosure. We have considered the exceptions you claim and reviewed the submitted information.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or

¹Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

reasonably anticipated, and that (2) the requested information relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 551 at 4 (1990). A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103. Open Records Decision No. 588 (1991). You state that TNRCC has a pending administrative enforcement action against the respondent at issue. In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The requested records may therefore be withheld.

In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As section 552.103 is dispositive, we will not address your section 552.107 assertion. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

Ref: ID# 128765

Encl: Submitted documents

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